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**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)**

**WRIT PETITION (S) No. 1156 /2007 (S.B.)**

**PETITIONER** : Preetam Dongre, S/o Late M.L. Dongre Aged about 25 years, R/o Kalkapara, Ward No. 1 Near Sala no. 3 Dongargarh, Distt. Rajnandgaon (C.G.)

F.R. No. 3672/07 Vivek Sharma
Presented by
dated 12/11/07

**VERSUS**

**RESPONDENTS** : 1. State of Chhattisgarh, Through: Secretary, Department of Co-operative Societies, Raipur. (C.G.)

2. Registrar, Co-operative Societies (Audit), Raipur (C.G.)

3 Assitant Registrar, Co-operative Societies (Audit) Raipur. (C.G.)

4 State of M.P. Through, Secretary Department of Co-operative Societies, Ballabh Bhawan, Bhopal.

5. Union of India through, Secretary, Department of Human Resources, New Delhi (India)

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Asst. Solicitor General of India
CHHATTISGARH HIGH COURT
High Court Campus, Bilaspur (C.G.)

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC. OR DIRECTION / ORDER OF LIKE NATURE ETC.**

The humble petition of above name petitioner: -

**MOST RESPECTFULLY SHOWETH**

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition (s) No. 1156 of 2007**

Petitioner — Preetam Dongre

Versus

Respondents — State of Chhattisgarh & others

**Single Bench:** Hon'ble Mr. Justice **Satish K. Agnihotri.**

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Present: Mr. Vivek Sharma, Advocate for the petitioner.
Mr. Vinay Pandey, Panel Lawyer for the State/ respondent No. 1 to 3.

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**O R D E R**

**(Passed on 28th Day of February, 2007)**

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. By this petition, the petitioner seeks a writ of mandamus directing the respondents to consider the case of the petitioner for compassionate appointment. The petitioner further seeks for issuance of a writ of certiorari quashing the policy/circular dated 2-2-2006.

2. The father of the petitioner, while working as Co-operative Inspector in the office of Co-operative Societies (Audit), Government of Chhattisgarh, Raipur died on 07-11-1995 in harness.

3. It appears that the petitioner has made an application after 2000 on attaining the age of 18 years and further after having passed Higher Secondary School Certificate Examination. No specific date was stated either in the pleadings or in the arguments.

4. It appears that vide order dated 21.1.2004, issued by the Assistant Registrar, Co-operative Societies (Audit) the petitioner was informed

(68)

that the compassionate appointment cannot be granted to him in view of the memo dated 10-6-2003, issued by the General Administration Department, Government of Chhattisgarh, D.K.S. Bhawan, Raipur. Thereafter, one more application was made on 20.01.2006. The same was also rejected vide order dated 3.4.2006 holding that as per new circular dated 2.2.2006, all the legal heirs/dependents of the deceased employee, who died after 1.11.1997, can be considered for compassionate appointment. In the present case, father of the petitioner died on 7.11.1995 thus, his claim was rejected.

5. The petitioner has filed this writ petition stating that the circular/policy dated 2.2.2006 is unreasonable, discriminatory and not in consonance with the spirit of the Constitution of India. His case is covered by the order dated 20.1.2006 passed in W.P. No. 304/2006. However, the petitioner has not assigned any reason why policy of the State Government should be quashed. The policy, in normal circumstances may not be interfered with by the High Court, except in the case of being un-constitutional, arbitrary and un-reasonable. The State Government has granted several appointments on the basis on policy dated 2.2.2006 and circular dated 10.6.2003. This policy dated 10.6.2003 came into consideration before this Court, also in several petitions and this Court has directed to consider the cases in accordance with the policy dated 2.2.2006. Thus, the prayer with regard to quashing of the policy is rejected. The prayer for consideration of the case of the petitioner on the basis of the old policy dated 10.6.2003 is not sustainable as after creation of State of Chhattisgarh under the provisions of M.P. Re-organization Act, 2000, the previous State

(69)

Government has issued a policy dated 10.6.1994 and the present State Government has issued a policy dated 1.5.2000.

6. Thus, it cannot be directed to consider the case of the petitioner in view of the old policy which has been superceded by the subsequent policy.

7. The Hon'ble Supreme Court, in the case of ***Commissioner of Public Instructions and others*** vs. ***K.R. Vishwanath***[1], while dealing with the question of the object of the compassionate appointment, observed as under :-

> "9. As was observed in *State of Haryana* v. *Rani Devi*[1], it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi case*[1] it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *LIC of India* v. *Asha Ramchhandra Ambekar*[2] it was

(23)

pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal* v. *State of Haryana*[3] that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

"**10.** In *Sushma Gosain* v. *Union of India*[4] it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati* v. *Union of India*[5] and *Union of India* v. *Bhagwan Singh*[6]. In *Director of Education (Secondary)* v.

(21)

*Pushpendra Kumar*[7], it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

8. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the

family members could sustain themselves financially from other sources of income.

9. The Supreme Court, in ***State of J & K and others*** **vs.** ***Sajad Ahmed Mir***[2], after having considered all the aspects of compassionate appointment, observed as under :-

> "11. ..... it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

10. Applying the settled principle of law as enunciated by the Hon'ble Supreme Court in various cases (supra), it is well settled that the compassionate appointment, which is not in accordance with the constitutional scheme of employment, is to mitigate the hardships caused due to untimely death of the employee. In the present case, the petitioner died on 07-11-1995, the petitioner has not taken any step

(73)

immediately even after attaining the age of majority. Thus, the petitioner cannot be granted any relief.

11. As a result, for the reasons stated hereinabove, the writ petition is dismissed. No order as to costs.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

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1 (2005) 7 SCC 206

2 (2006) 5 SCC 766

Subhash